

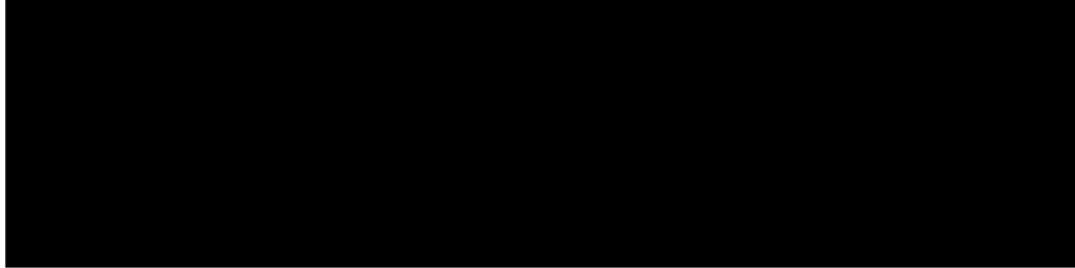


**Eric Gonzalez**  
District Attorney

**DISTRICT ATTORNEY  
KINGS COUNTY**  
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**Michael Solomon**  
Assistant District Attorney

February 13, 2020



In connection with the above-named case, the People voluntarily provide the following information regarding:

**MOS NAME: MANNEY, FREDERICK**

**MOS TAX: 949938**

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. Further, the People reserve the right to move in limine to preclude reference to this information, or otherwise to object to its use and/or introduction into evidence.

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**Disclosure # 1:**

BY UNPUBLISHED DECISION AND ORDER IN PEOPLE V. XXX (REDACTED) (SUP CT., KINGS CTY., MAY 25, 2016, IND. NO. 9730/15), JUSTICE SUZANNE MONDO GRANTED DEFENDANT'S MOTION TO SUPPRESS EVIDENCE AS FRUIT OF AN ILLEGAL SEIZURE. THE DECISION FOLLOWED A COMBINED DUNAWAY/MAPP/HUNTLEY HEARING ON APRIL 13, 2016, BEFORE THE HONORABLE JOEL M. GOLDBERG, JUDICIAL HEARING OFFICER. THE ONLY WITNESS AT THE HEARING WAS POLICE OFFICER FREDERICK MANNEY, SHIELD NUMBER 22317.

ACCORDING TO PO MANNEY'S HEARING TESTIMONY, DEFENDANT WAS WALKING ON THE SIDEWALK WITH OTHER INDIVIDUALS WHEN HE ADJUSTED SOMETHING AT HIS WAISTBAND. PO MANNEY TESTIFIED THAT HE THEN SAW THE HANDLE OF A FIREARM UNDER DEFENDANT'S UNZIPPED VEST. AT THE HEARING, PO MANNEY, BRUSHING BACK THE SUIT JACKET HE WAS WEARING SUCH THAT HIS OWN SERVICE WEAPON WAS EXPOSED, DEMONSTRATED HOW DEFENDANT, ALSO, HAD MOVED IN THIS MANNER. PO MANNEY TESTIFIED THAT HAD DEFENDANT NOT DONE SO, PO MANNEY WOULD NOT HAVE SEEN DEFENDANT'S GUN.

JHO GOLDBERG FOUND THAT PO MANNEY'S TESTIMONY - THAT DEFENDANT HAPPENED TO HAVE MOVED IN SUCH A WAY THAT HE EXPOSED THE FIREARM HE WAS CARRYING - WAS NOT CREDIBLE, AND THUS, THE OFFICER'S SUBSEQUENT PURSUIT OF DEFENDANT WAS ILLEGAL. NOTING THE DEFERENCE DUE TO THE JHO, JUSTICE MONDO ADOPTED JHO GOLDBERG'S FINDINGS THAT THE TESTIMONY WAS UNWORTHY OF BELIEF AND HAD BEEN PATENTLY TAILORED TO AVOID CONSTITUTIONAL OBJECTION, AND GRANTED DEFENDANT'S MOTION TO SUPPRESS THE RECOVERED FIREARM AND DEFENDANT'S LATER STATEMENT. THE CASE WAS DISMISSED ON AUGUST 4, 2016.

A COPY OF JUSTICE MONDO'S DECISION AND A COPY OF THE TRANSCRIPT OF JHO GOLDBERG'S HEARING FINDINGS ARE ATTACHED. DEFENDANT'S NAME HAS BEEN REDACTED FROM BOTH DOCUMENTS.

**Disclosure #2:**

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION ARISING FROM 4-24-12 AGAINST MOS MANNEY:  
DEPT. RULES & VIOLATIONS -TRAFFIC VIOLATIONS BUREAU- NON APPEARANCE  
ACTION TAKEN: "B" CD-ISSUED

**Disclosure #3:**

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATIONS ARISING FROM 3-21-19 AGAINST MOS MANNEY:  
ALLEGATION : 1. INVOICE DISCREPANCY - LAB - MARIJUANA  
ALLEGATION : 2. REPORT INCOMPLETE/INACCURATE - PROPERTY CLERK INVOICE  
CLOSED DATE : 2019-07-17  
ACTION TAKEN : VERBAL INSTRUCTIONS

**Disclosure #4:**

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION ARISING FROM 6-18-19 AGAINST MOS MANNEY:  
PRISONER INCIDENT - ESCAPE/ATTEMPTED ESCAPE - FROM OTHER LOCATION  
CLOSED DATE: 11-4-19  
ACTION TAKEN: VERBAL INSTRUCTIONS

**Disclosure #5:**

THE FOLLOWING ALLEGATIONS ARE PENDING AGAINST MOS MANNEY  
ALLEGATION : 1. INVOICE DISCREPANCY - LAB - MARIJUANA(PENDING)  
ALLEGATION : 2. REPORT INCOMPLETE/INACCURATE - PROPERTY CLERK INVOICE(PENDING)  
CASE STATUS : PENDING  
OVERALL DISPOSITION : PENDING

**Disclosure #5:**

In addition, the People are aware of the following federal civil rights action(s) and/or state tort civil lawsuit(s) in which the indicated officer has been named as an individual defendant. Note, the disposition information may not be current:

PLAINTIFF	DOCKET	COURT	FILED	DISPOSED	DISPOSITION
Willie French	14-CV-2922	EDNY	5-15-14	3-31-16	Settlement, without admission

					of fault or liability
Gene Haynes	17-CV-3059	EDNY	5-22-17	6-22-18	Settlement, without admission of fault or liability
Steven French	6252/2014	Kings Cty. Sup. Ct.	9-8-14	12-11-17	Settlement
Jaqueline Davis	25801/2017E	Bronx Cty. Sup. Ct.	11-30-17		Pending
Leroy Nugent	300073/2017	New York Cty. Sup. Ct.	3-1-17		Pending(?)
Ronald Woods	3268/2014	Kings Cty. Sup. Ct.	3-11-14	7-10-17	Settlement

Eric Gonzalez  
 District Attorney  
 Kings County

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: CRIMINAL TERM, PART GP28

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PEOPLE OF THE STATE OF NEW YORK

By: Hon. Suzanne M. Mondo

against

Dated: May 25, 2016

DECISION AND ORDER

[REDACTED] Indictment No.: 9730/2015

Defendant.

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On April 13, 2016, the Honorable Joel M. Goldberg, Judicial Hearing Officer (JHO), conducted a *Dunaway Mapp Huntley* hearing. The JHO found the police officer's testimony that he saw the handle of a gun in defendant's waistband, which was the basis of the officer's pursuit of defendant, incredible and patently tailored to meet constitutional objections. Thus, the JHO recommended that this court suppress both the firearm and defendant's statement. The People subsequently submitted a motion to controvert the JHO's findings, and defendant submitted opposition papers to that motion. This court has reviewed the hearing transcript, the JHO's findings of fact and conclusions of law, and the parties' post-hearing submissions.

A hearing court's determination of credibility is accorded great weight and will not be disturbed unless it is clearly unsupported by the record. See, eg., People v. Prochilo, 41 NY2d 759 (1977); People v. Festus, 133 AD3d 876 (2d Dept. 2015); People v. Garafolo, 44 AD2d 86 (2d Dept. 1974). Here, the JHO had the advantage of not only seeing and hearing the officer testify, but also of observing the officer's demonstration during re-direct examination of how he was able to see the handle of a gun in defendant's waistband and inside of defendant's vest. According to the JHO, during the demonstration, the officer testified incredibly that just as defendant walked under street

lights and in front of the officer, defendant made a sudden unexplained motion to reveal the handle of a gun. This court adopts the JHO's finding that the officer's testimony was unworthy of belief and patently tailored to nullify constitutional objections to the police conduct. See, eg., People v. Rumph, 199 AD2d 434 (2d Dept. 1993); People v. Parmiter, 55 AD2d 938 (2d Dept. 1977). This court notes, however, that it does not agree with the JHO's statements disparaging the Assistant District Attorney for not calling additional officers to testify at the hearing and implying that *Brady* material may have been withheld. Therefore, defendant's motion to suppress is granted.

This shall constitute the decision and order of the court.

ENTER:



SUZANNE M. MONDO  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: CRIMINAL TERM: Part 22

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Indictment No.

9730/2015

Hearing

[REDACTED],  
Defendant.

-----x

320 Jay Street  
Brooklyn, New York 11201  
April 14, 2016

B E F O R E:

THE HONORABLE JOEL GOLDBERG  
Justice of the Supreme Court

A P P E A R A N C E S:

For the People:

HONORABLE KENNETH P. THOMPSON  
District Attorney - Kings County  
350 Jay Street  
Brooklyn, New York 11201  
BY: CHRISTOPHER MYCO, ESQ.  
NICKI BARGUEIRAS, ESQ.,  
Assistant District Attorney

For the Defendant:

GREG GOMEZ, ESQ.  
305 Broadway  
New York, New York

MARY CAWLEY  
Official Court Reporter

PROCEEDINGS

2

1 THE CLERK: This is number 1 on the Part 22  
2 calendar, indictment 9730 of 2015. [REDACTED].

3 MR. MYCO: Christopher Myco for the People.

4 MS. BARGUEIRAS: Nicki Bargueiras for the  
5 Office of the District Attorney. Good morning.

6 THE COURT: Good morning.

7 MR. GOMEZ: Greg Gomez for Mr. [REDACTED].

8 THE COURT: Be seated.

9 This is on for a decision based on the hearing  
10 that was held yesterday. The People called one witness,  
11 Police Officer Frederick Manney M-A-N-N-E-Y, of the  
12 Anticrime Unit who testified that on November 28, 2015  
13 he was on anticrime patrol in plain clothes in an  
14 unmarked car with two other police officers, an officer  
15 Lazar and an investigator Viet, whose name we're not  
16 sure how it's spelled, V-I-E-T or some other way.

17 Officer Manney testified, at about 11:30 p.m.,  
18 he was the driver of the car driving south on Strauss  
19 Street towards Riverdale Avenue. He said it was well  
20 lit by lights that were under a scaffolding. As he was  
21 stopped at a stop sign, he saw three people walking from  
22 his left to his right on Riverdale, one of whom he  
23 identified in court as the defendant. And he testified  
24 that, while the defendant was approximately three  
25 car-lengths from him, he saw the defendant adjust his

mc

1                   waistband. Apparently, according to the officer, the  
2                   officer believed he had some object but he didn't really  
3                   describe it as a bulge or outline of a weapon or  
4                   anything in particular.

5                   As the parties continued to walk in the  
6                   direction of the police car which was, according to  
7                   Officer Manney, still at the stop sign, he said --  
8                   testified all three people looked at the police car. At  
9                   this point the three people are in the intersection  
10                  apparently directly in front of the police car,  
11                  according to Officer Manney about one car length away,  
12                  and one party breaks off from the group. He sees the  
13                  defendant, who he describes as wearing a vest. Now  
14                  apparently -- although it wasn't stated -- this vest  
15                  must have been the type with a zipper, that was  
16                  unzipped. The Court really has to use its imagination  
17                  on this because there is no testimony -- when I heard it  
18                  was a vest, I thought a vest is commonly something you  
19                  pull over -- but later, I believe the officer described  
20                  it as a jean vest and he testified that as the defendant  
21                  was basically walking right in front of the officer, and  
22                  apparently, you got the feeling from the officer that  
23                  the officer believed that the three people recognized  
24                  them as plain clothes officers by the sudden departure  
25                  of one of them and the adjustment of the waistband,

1 perhaps. The officer was able to see what he believed  
2 to be the handle of a gun in the defendant's waistband.

3                 Then, a later portion of his testimony, the  
4 People ask him to demonstrate how this happened. And  
5 according to the demonstration, the officer who is now  
6 in the well of the courtroom, walked from this -- from  
7 left to right as the Court was viewing it, and his hand  
8 brushed the side of his suit jacket and the officer said  
9 this is the way the defendant's hand brushed the garment  
10 and exposed the gun handle in the officer's holster for  
11 maybe a second, maybe less. This was in a well-lit area  
12 at night, according to the officer, and the officer  
13 testified that he recognized this as the handle of a  
14 gun.

15                 The individuals kept walking across the  
16 intersection. The officer said -- he said to the other  
17 two people, other officers in the car, "I think this kid  
18 has a gun." Those are the words -- now that's from my  
19 notes. I actually have a transcript here. Maybe I  
20 should check it again now that I have the benefit of a  
21 transcript, which I just received a moment ago.

22                 Close enough. Page 11 to page 12, according  
23 to the testimony, I told my partner, Officer Lazar, who  
24 was seated next to Officer Manney, the other detective,  
25 according to the officer's testimony, he was in the

1 backseat. I told my partner, Officer Lazar, I said,  
2 "Yo, I think this kid has a gun on him."

3                   Officer Manney testified that he and Officer  
4 Lazar exited the car and Officer Lazar went in the  
5 direction of the individual who split off from the other  
6 two and Officer Manney approached the defendant, then  
7 said, "Can I speak to you for a minute?" According to  
8 Officer Manney, the defendant said, "Nah" and ran.  
9 Officer Manney chased after the defendant for several  
10 blocks. About 45 seconds into the chase, according to  
11 Officer Manney, the defendant took out a gun and threw  
12 it to the ground and kept running. The officer was  
13 about ten feet behind the defendant when this happened.  
14 The officer lost sight of the defendant.

15                  He later saw the defendant in the police car  
16 in the custody of Officer Lazar about two minutes later.  
17 Apparently Officer Lazar went back to the car at some  
18 point and drove it and the defendant was placed in it  
19 it. We really don't know how the defendant got into the  
20 car because Officer Lazar didn't testify. The defendant  
21 was taken to the precinct at about 11:45 p.m. and,  
22 according to a video that was stipulated into evidence,  
23 the defendant was questioned by a police officer or  
24 Detective White (ph.), the time stamp on the video  
25 indicated that it was about 11 o'clock the next morning.

1 So the defendant has been in custody for 12 hours. No  
2 one testified as to how the defendant was treated while  
3 he was in custody, whether he was fed, whether he slept,  
4 whether anybody ever had a conversation with him.

5 The video begins with Officer White and the  
6 defendant walking into the room. One might assume that  
7 they had prior conversations because the officer doesn't  
8 even introduce himself to the defendant on the video as  
9 far as I recall. Nevertheless, the defendant does not  
10 claim that any statement made was the result of prior  
11 conversations the defendant had with the officer or with  
12 anyone else. Officer White advised the defendant of his  
13 rights. The defendant stated he understood his rights  
14 and agreed to answer the officer's questions. A lot of  
15 the conversation is really not relevant to the case and  
16 could be subject to a motion to redact but that would be  
17 for the trial judge to decide.

18 The defendant showed no signs of fatigue or  
19 discomfort or being upset in any way. So, I would find,  
20 as, from a Miranda point of view, the statements were  
21 voluntarily made and admissible.

22 But we have a Dunaway aspect to the statement  
23 as well as a motion to suppress the evidence. The chase  
24 of the defendant, in order to be justified, had to be  
25 based on reasonable suspicion that the defendant had

1 committed a crime or, actually, an offense in the  
2 officer's presence. The officer had no prior  
3 information about the defendant. No prior information  
4 about any crimes being committed in that neighborhood.  
5 No information that the defendant or anybody in his  
6 group fit the description of anyone or any group that  
7 had been involved in a crime.

8           The defendant was seen walking down the street  
9 adjusting his waistband, which, that alone, does not  
10 create reasonable suspicion that someone has committed a  
11 crime. I'll cite some cases about that in a moment.  
12 What would be necessary -- and even the defendant's  
13 flight from the officer where the officer had nothing  
14 more than an observation that the defendant or if the  
15 officer had nothing more than the defendant adjusting  
16 his waistband, would not create reasonable suspicion  
17 that the defendant had committed a crime. So, if the  
18 officer did see what appeared to be the handle of a gun  
19 in the defendant's waistband, the officer then would  
20 have reasonable suspicion.

21           So, the question then becomes what is the  
22 credibility of the officer in so far as his observation  
23 of the defendant having a gun in his waistband?

24           Now, there were two other officers in the car  
25 with the defendant at the time. Although those officers

1 may not have seen anything, those officers were in a  
2 position to corroborate much of what Officer Manney had  
3 said. Now I'm not drawing an adverse interest against  
4 the People for not calling these other officers because  
5 they really weren't put on notice in so far as an  
6 adverse interest charge but I'm noting just as a  
7 determination -- determinator of the witness'  
8 credibility that the officer's testimony is  
9 uncorroborated. If the other officers in the car would  
10 have corroborated Officer Manney's statement as to what  
11 he saw before he got out of the car, that would support  
12 Officer Manney's testimony that he actually saw a gun.  
13 In fact, the words that Officer Manney used, at least  
14 when he testified does not even say he saw the handle of  
15 a gun. The words that he used was "I think this kid has  
16 a gun." Now, that could have been based on a hunch or  
17 based on an observation. If he had said "I just saw a  
18 handle of a gun," that would be something else even if  
19 the other officers never saw that. They would have  
20 testified that Officer Manney said it as sort of a  
21 spontaneous statement. The other officers were never  
22 called. I don't know if the People ever spoke to these  
23 other officers. I don't know what these other officers  
24 would have had to add. We won't know as far as the  
25 hearing is concerned. I do hope we don't have a

1 situation where they did speak to them and they didn't  
2 corroborate Officer Manney and they just were not  
3 called. I don't know about -- if there's Brady applies  
4 to motions to suppress. Brady applies to guilt or  
5 innocence. But if you have a situation where officers  
6 do not support the testimony of another officer, as far  
7 as a suppression hearing is concerned, I think the  
8 People would have an obligation to find out that out and  
9 if they don't support it, at least turn that information  
10 over to the defense. Although I don't know if that's  
11 the law at this time but at least the People should have  
12 known what their what their testimony was.

13 Officer Manney testified that the defendant  
14 happened to brush the bottom of his jacket back just as  
15 he was crossing the street, just as he was in front of  
16 the officer, just as he was under the lights, just for a  
17 matter of a few seconds. It's not the first time that  
18 the courts have heard testimony like this. In People v.  
19 Parmiter, 55 Appellate Division 2nd 938, Second  
20 Department 1977 -- the case has been around for a long  
21 time -- a police officer testified that the defendant  
22 "hitched up his pants to reveal a gun handle," that  
23 testimony the Court said has all the indicia of having  
24 been patently tailored to nullify constitutional  
25 objections to the police conduct.

1           In -- as cited in the treaties by Judge Camins  
2           at section 7.03(3)(b) AB, the courts have rejected  
3           testimony of police officers where the police officers  
4           have alleged that defendants have made sudden  
5           unexplainable motions which suddenly reveal the presence  
6           of weapons or narcotics on their person. And that's  
7           really what we had here. We have a defendant all of a  
8           sudden just as he's crossing in front of the police car,  
9           according to the officers' testimony, happening to brush  
10          back his vest just so that the officer could see what he  
11          claims to be the handle of a gun, although according to  
12          his own testimony he didn't say I saw I handle of a gun,  
13          he said "I think this kid has a gun," which sounds more  
14          like a hunch. And the hunch does not justify reasonable  
15          suspicion which would justify a chase. As was said by  
16          the Court of Appeals in People v. Robbins, 83 NY2d 928,  
17          in that case the defendant exited the rear of a livery  
18          cab that was stopped for defective brake lights. The  
19          defendant grabbed his waistband and fled. The police  
20          chased the defendant. The police had no other  
21          information to connect the defendant to criminal  
22          activity and, therefore, they did not have reasonable  
23          suspicion necessary to justify a pursuit. Therefore,  
24          what happened during that pursuit was that the defendant  
25          dropped a bag of drugs as he was being chased. Court of

1 Appeals said the bag of drugs defendant dropped during  
2 the pursuit was in response to illegal police behavior  
3 and was suppressed. So because I do not find it  
4 credible that the officer saw the handle of a gun as the  
5 defendant happened to brush back the bottom of his vest,  
6 just as he happened to walk in front of a police car,  
7 even if the officer did see the defendant adjusting his  
8 waistband, the officer did not have reasonable suspicion  
9 which was necessary to chase the defendant because, in  
10 New York, a chase constitutes a seizure -- it's not a  
11 seizure under United States constitution but it's a  
12 seizure in New York. So therefore, the gun which was  
13 the result of the chase, the People did not argue that  
14 there was an attenuation that is an abandonment of the  
15 gun independent from the chase, I find the gun should be  
16 suppressed and the defendant was illegally arrested and  
17 therefore his statement is suppressed as well.

18 All right. I was directed that you had an  
19 agreed adjourn date back in front of Judge Mondo. We'll  
20 keep that date.

21 MR. MYCO: I believe we're going to Judge  
22 Mondo right now after this decision.

23 (Continued on following page.)

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25

PROCEEDINGS

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2

3 Mondo.

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MR. MYCO: Okay.

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It is hereby certified that the  
foregoing is a true and accurate transcript  
of the proceedings.

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10

*M. Cawley*

11

MARY CAWLEY

Official Court Reporter

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